

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 18175 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

AJAYBHAI B GOHEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 18175 of 2003
MR PS CHAMPANERI for Petitioner No. 1
Ms. Archana Raval, AGP for Respondent No. 1-3
MR UTPAL M PANCHAL for Respondent No. 4-21

CORAM : HON'BLE MR.JUSTICE M.R. SHAH
Date of decision: 04/10/2004

ORAL JUDGEMENT

Rule. Ms. Archana Raval, learned AGP for respondents No. 1 to 3 and Shri Utpal Panchal, learned advocate for respondents No. 4 to 21 waive service of Rule With the consent of parties, the matter is taken up for final hearing today.

2. In this petition under Article 226/227 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the Additional Registrar, Cooperative Societies (Appeals), State of Gujarat, dated 19.12.2003 in dismissing the revision application and remanding the matter directing the District Registrar to pass an appropriate order on the inquiry under Section 81 of the Gujarat Cooperative Societies Act ["the Act" for short].

3. Shri PS Champaneri, learned advocate appearing on behalf of the petitioner has submitted that in the inquiry proceeding under Section 81 of the Act the petitioner moved an application before the District Registrar to give certain documents, however, the same came to be rejected by the District Registrar of Cooperative Societies, Rajkot by communication dated 13th October 2003 and the petitioner was directed to appear on 20th October 2003. Being aggrieved and dissatisfied with the same the petitioner preferred revision application before the Additional Registrar, Cooperative Societies (Appeals), State of Gujarat, Gandhinagar. It is the contention on behalf of the petitioner that the Addl. Registrar granted interim relief staying further proceedings before the District Registrar. In the meantime, one application came to be submitted by one Pravinkumar Kalyanjibhai for joining him as a 3rd party and the matter was adjourned to 17th January 2004. It appears that in the meantime the Additional Registrar, Cooperative Societies, Gandhinagar, received some fax message from the District Registrar by which the District Registrar has requested to decide and dispose of the application as early as possible as many complaints are made before him. It appears that the Additional Registrar without giving an opportunity to the petitioner passed an order dated 19th December 2003 in remanding the matter to the District Registrar, Rajkot, directing him to take decision on merits within 30 days as according to him no final order in the inquiry under Section 81 of the Act is passed. Being aggrieved and dissatisfied with the same the present Special Civil Application has been filed.

4. It is an admitted position that revision application was filed by the petitioner against the order/communication dated 13th October 2003 by which the application of the petitioner for supplying certain documents came to be rejected. It is also an admitted position that the revision application was adjourned to 17th January 2004 and the impugned order is passed on

19th December 2003 without giving opportunity to the petitioner and the revision application is not decided on merits, i.e., the question with regard to communication dated 13th October 2003 against which the revision application was filed is not considered at all. In view of the fact that before passing the impugned order dated 19th December 2003 the petitioner is not heard and that the matter was adjourned to 17th January 2004, without going into the legality and validity of the order on merits, the matter is remanded to the Additional Registrar, Cooperative Societies (Appeals), State of Gujarat, Gandhinagar, for deciding and disposing of the revision application filed by the petitioner in connection with communication dated 13th October 2003 on merits after giving opportunity of hearing to the person who has filed application for joining as party. Accordingly, the impugned order dated 19th December 2003 passed by the Additional Registrar impugned in the present petition is hereby quashed and set aside. The Additional Registrar is directed to decide and dispose of the revision application preferred by the petitioner challenging the communication dated 13th October 2003 of the District Registrar, Rajkot on merits in accordance with law after giving opportunity to the person who made an application for joining as party within the period of 4 weeks from the date of receipt of this order. Rule is made absolute with no order as to costs.

5. It goes without saying that as the matter is remanded to the Additional Registrar for deciding the revision application afresh, the interim relief, which was granted by the Additional Registrar, during the pendency of the revision application shall stand restored.

[M.R. Shah, J.]

rmr.